***United States Court of Appeals***

***for the Second Circuit***


# APPELLANT'S BRIEF & APPENDIX

# 74-2469

BRIEF

&

APPENDIX

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Docket No. 74-2469

---

CHARLES BRADLEY GRIFFITH, on behalf of himself and all others similarly situated

Plaintiffs,

v.

[illegible], individually and as [illegible] United States; Committee for the Re-election of the President; [illegible] Finance Committee to Re-elect the President

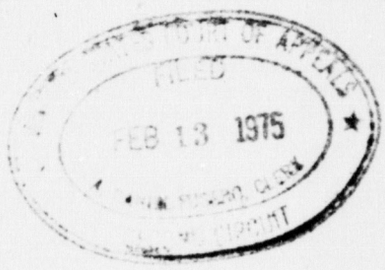
Defendants.

---

APPEAL

from

Vermont District Court




CHARLES BRADLEY GRIFFITH
- pro se -
Box 291, Putney, Vermont

PAGINATION AS IN ORIGINAL COPY

# I. TABLE OF CONTENTS

Another even more emphatic example of an intrusion into a governor-

## TABLE OF CASES

with a pointedness that perfectly fits the instant appeal th

## Statutes and Authorities

## Preliminary Statement

Chief Judge James S. Holden of the District Court of Vermont rendered the decision herein appealed from.

## II. STATEMENT OF THE ISSUES

A. Justiciability:

1. Is a challenge to an election, a trial of a man's title to office, or a trial of his conduct?

2. Does the impeachment clause textually commit to Congress the function of trying a man's title to the Presidency...as well as the function of trying a President for misconduct?

B. Venue

1. Where does the claim arise?

2. Are the unincorporated committees who did business in Vermont, residents of Vermont?

## III. STATEMENT OF CASE

In the captioned action plaintiff Charles Bradley Griffith, on behalf of himself and all those similarly situated (all those "who suffered disadvantage to themselves" - i.e., "all the registered voters of 1972 who were in opposition to President Nixon and his Administration or would have been if the truth, vis-a-vis Nixon et al, had not been unlawfully kept from them and/or if a more acceptable candidate had not been unlawfully manipulated out of the Democratic...nomination." Complaint par. #5 & #170, respectively) seeks a determination that defendants (& "agents who acted for defendants or were under defendants' direction and control," par. #11) did cause to be deprived, did conspire to deprive, and did deprive plaintiffs of their right and privilege to "Free Elections" (specifically "the right, when elections are held, to have said elections free from control - i.e. free from any manner or form of manipulation that would debase, dilute, diminish, or deny the vote of any segment of the American public that has been given the right to vote," par. #165), their right to vote, their right to know, and their right to equal protection of the law by corrupting and minipulating the nominational-electoral process through the commission of massive and pervasive "Informational Irregularities"

(INFORMATIONAL IRREGULARITIES

"A. SUPPRESSION...of information
   (a) Cover-ups
   (b) Inaccessibility

B. REPRESSION...of information sources
   (a) Sabotage
   (b) Intimidation
   (c) Censorship

C. ESPIONAGE...to acquire information
   (a) Burgling
   (b) Bugging
   (c) Surveillance

D. EXTORTION...of monies to propagate information
(a) Fear-vending
(b) Favor-vending
(c) Blackmail

E. FABRICATION...of misinformation
(a) Counterfeiture
(b) Entrapment
(c) Prosecution," par. #20)

which were determinative - i.e. if the electorate on election day had had knowledge of all the embarrassing information being unlawfully covered up (directly or indirectly) and of all the unlawful cover-up activities themselves, they would have voted quite differently, very possibly reversing the outcome of the election; and if the fragile images of the candidates for the Democratic nomination had not been unlawfully manipulated, the Democratic nominee could quite possibly have been someone other than George McGovern (see par. #156) - in violation of Constitutional and Statutory (Title 42, Section 1985) guarantees; that the Presidential election and nominations are therefore null and void; and that new elections and primaries be held, and damages paid.

For Course of Proceedings and its Deposition see Docket Sheet on last page of brief.

Note: In District Court's dismissal order, some sloppy errors are made in their statement of the case, e.g., plaintiffs are not all U.S. citizens who where registered to vote in the 1972 Presidential elections - they most conveniently drop off additional qualifying "who" clause (see above for correct definition of plaintiffs); also, there was no request in the complaint to declare President Nixon an ineligible candidate in a new election.

## IV. ARGUMENT

### A. JUSTICIABILITY

Introduction

By ruling that the validity of a Presidential Election and thereby the validity of a man's title to the presidency is a non-justiciable political question, the Court has made a grievous error whose import extends infinitely beyond the immediate instant complaint. If the Courts fail to reverse Judge Holden's order, a precedent will be set - and law established - that will make the words and guarantees of the Constitution empty and hollow and will dim the voices of the Declaration of Independence. ([A]ll men...are endowed...with certain unalienable Rights - that among these are Life, Liberty, and the Pursuit of Happiness - That to secure these Rights, Governments are instituted among Men, deriving their Powers from the Consent of the Governed" (emphasis added) Declaration of Independence; "Among the rights and privileges which have been recognized by this Court to be secured to citizens of the United States by the Constitution [is]...the right to vote for Presidential electors." In re Quarles, 158 U.S. 532 (1895), citing Ex parte Yarbrough, 110 U.S. 651 (1884); see Hardyman v. Collins, 80 F. Supp. 501, 504-05 & n.5 (S.D.Cal. 1948), aff'd 341 U.S. 651 (1951). The Court's ruling means that if a power or ideological group elects a President and Vice President through unlawful and unconstitutional interstate manipulation, corruption, and fraud the Nation and its people will be powerless to supplant these usurpers with fairly, democratically elected men. For Congress, as will be shown, has no Constitutionally directed responsibility and has eskewed any statutory or de[illegible] responsibility for judging the legitimacy of a Presidential Election (the election of the electors)

but rather only concerns itself with the counting of the electoral vote... and with whether and which electors' appointments were lawfully certified and if their votes were regularly given.

Alexander Hamilton in speaking of intervention in National Elections said "every government ought to contain in itself the means of its own self preservation." Fed. Papers (59) It clearly was not the intent of the Constitutional Convention or the interpretation of the ratifying Conventions that our Constitution not give our government "the means of its own self preservation."

The pertinent paragraph of Judge Holden's order reads:

> In the instant case the removal and the manner of succession of a president are explicitly committed by the Constitution to the Congress and not the courts. The remedy for the types of acts complained of in this case is vested in Congress by virtue of Article II, Section 4, which states, "The President, Vice President, and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." The manner of succession and the timing thereof is explicitly set forth in Article II and in the 25th Amendment, as is the manner in which the Vice President is to be selected upon a vacancy in that position. Since there is a "textually demonstrable constitutional commitment of the issue [to a coordinate political department]" [Baker v. Carr, 369 U.S. 186, 217 (1962)] raised by this aspect of the

request for relief, it seeks to present a non-justicable political controversy that is inappropriate for decision by this Court.

To paraphrase...this order claims that the function of redressing a corrupted and fraudulent Presidential election - the testing of a man's title and right to the Presidency and, if it doesn't exist, the taking of remedial action - is "textually" and "explicitly committed by the Constitution to the Congress" by virtue of the impeachment clause ("Article II, Section 4") and the succession clauses ("in Article II and in the 25th Amendment").

It should be noted that councils for the defence gave so little credence to the notion that this case present a non-justiciable political question because of a constitutional commitment of the issue to Congress that they did not bother to broach it in their motions' and memorandums' polypronged attack upon the complaint.

Outline - Headings

1) THE COURTS HAVE JURISDICTION OVER TRIALS TO TEST A PERSON'S TITLE TO THE PRESIDENCY: THE CONGRESS HAS JURISDICTION OVER TRIALS TO REMOVE A PERSON FROM THE PRESIDENCY FOR MISCONDUCT.

2) IMPEACHMENT IS NOT THE ONLY METHOD BY WHICH CIVIL OFFICERS OF THE U.S. ARE REMOVED FROM OFFICE.

3) JUDICIAL REVIEW OF TITLE TO OFFICE OCCURRED IN POWELL v. McCORMACK 395 U.S. 486 (1969).

4) THE FUNCTION OF JUDGING THE CONSTITUTIONAL AND LEGAL VALIDITY OF A PRESIDENTIAL ELECTION AND THE COINCIDENT TITLE TO THE PRESIDENCY IS NOT TEXTUALLY COMMITTED TO CONGRESS BY THE 12th AMENDMENT.

5) THE 20th AMENDMENT ANTICIPATES THE SELECTION OF PRESIDENTS AFTER THE COMMENCEMENT OF THEIR CONSTITUTIONAL TERM OF OFFICE AND PROVIDES THAT HE WHO ACTS AS PRESIDENT SHALL BE REMOVED UPON SAID SELECTION.

6) A PRESIDENT IS NOT IMPEACHABLE WHEN HIS ELECTION IS FRAUDULENT IF IT CANNOT BE PROVED HE WAS INVOLVED IN THE CORRUPTION - i.e. GUILTY OF "HIGH CRIMES AND MISDEMEANORS."

1) THE COURT HAS ERRED BECAUSE OF A SIMPLE MISREADING OF THE CASE: THIS IS A CASE - JUDICIAL IN ITS CHARACTER - TO HEAR, TEST, AND DETERMINE THE RIGHT AND TITLE TO THE OFFICE OF PRESIDENT; A POWER CLEARLY DISTINCT FROM THE RIGHT OF CONGRESS TO IMPEACH AND CONVICT A PRESIDENT FOR "HIGH CRIMES AND MISDEMEANORS."

All the states (except Oregon) have impeachment clauses in their Constitution giving their legislature the power to impeach and convict officers of the state for acts which are never defined more restrictively than the U.S. Constitution's "high crimes and misdemeanors". Yet it is the common law and statutory practice of all states to test a man's right and title to a state office through the Courts or some other judicial mechanism established by the legislature...rather than through impeachment which is understood to try one's misconduct. One's title to an office and one's misconduct are stocastically independent questions: one may have committed no misconduct yet not have a legitimate title to an office; or one may have committed misconduct yet have a legitimate title to an office -- they are clearly separate questions.

In State v. Gleason, 12 Fla. 190 (1869), the Court terminated Gleason's intrusion into the office of Attorney General and held that the power to impeach executive officers, vested in the legislature, does not affect the jurisdiction of the Court to try the right of office, since the right of office is a proper matter of judicial cognizance, and impeachment is not a remedy equivalent to, or intended to take the place of, quo warranto. (Note: Any remedy that could have been obtained at common law by writ of quo warranto may now be secured by civil action. See Slim Olson, Inc. v. National Inforcement Commission, 118 F. Supp. 861 (1954).)

Incidences of elections being voided and the usurper's term of intrusion into a state office being terminated because of unlawful and

unconstitutional acts committed during an election are legion. The termination of a term of intrusion into the governorship is, however, infinitely more revealing than the terminations of supernumeraries. State ex rel La Follette v. Kohler, 200 U.S. 518 (1930), in which La Follette successfully challenged Kohler's title to the governorship speaks with elegance and clarity directly to the issue at hand. (An unusual element - though possibly not germane to the argument - of the La Follette Case is that the gubernatorial election was voided not for unlawful acts preceding said election, but rather for unlawful acts preceding the primary election.)

The La Follette Court vigorously expressed their cognizance of the importance of the question before them:

> At this point it is not improper for us to say that we realize the importance which attaches to the decision in this case whatever it may be. A correct solution of the questions presented is of far greater importance than the personal or political fortunes of any candidate, incumbent, group, faction, or party. We are dealing here with laws which operate in the political field, -- a field with respect to which the power of the legislature is primary and is limited only by the constitution itself. It has been said so many times it scarcely needs to be said again, that the realization of the democratic ideal of self-government rests upon an intelligent, informed, honest, and vigilant electorate. It is because of this that a large percentage of the public revenues is devoted to the education of our youth in order that they may not only be informed but have their consciences awakened to

their duties as citizens. All efforts to educate and awaken the electorate amount to nothing if corrupt appeals made to its prejudices or its cupidity lead it to cast a ballot otherwise than in accordance with its convictions, uninfluenced by anything save considerations of public policy. A democratic state must therefore have the power to protect itself against the consequences of ignorance, indifference, and venality and prevent all those practices which tend to subvert the electorate and substitute for a government of the people, by the people, and for the people, a government guided in the interest of those who seek to pervert it. Id. at 545.

In quashing the argument that "the method by which he [the Governor] may be removed from office are prescribed by the Constitution [i.e. impeachment]" id. 545, the Court held that there was to be no removal involved but, rather, merely a termination of Kohler's intrusion into the governorship.

It was held at common law that one who secured a plurality of votes cast at an election by means of fraud, bribery, intimidation, coercion, or misconduct of election officals, derived no title thereby to the office for which he was a candidate. In cases where the wrongdoing was such as to make it impossible to ascertain the true result of the election, there was held to be no election, or, as the phrase goes, "the election was held void." Id. at 549. See State ex rel Bell v. Conness, 116 Wis. 425. If the election is void and the candidate has intruded into the office, it is clear that he had no right thereto, and a judgment of ouster excluding him from the

> office and declaring it vacant is merely a summary and expeditious method of removing him therefrom. He does not by misconduct forfeit an office once lawfully acquired. He never secures title to it. It does not shorten his term because he was never elected. It terminates the term of his intrusion into the office. La Follette v. Kohler supra at 552.

The U.S. Constitution says "The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed...." The Wisconsin Constitution said "The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected." Except for the majority and electoral aspects they, in substance, read the same. It is therefore most instructive that the La Follette Court held:

> Manifestly what the framers of the constitution had in mind and what they intended to say and what they did say was that the person receiving the highest number of lawful votes cast at a valid election for governor should be elected. At the common law as it existed at the time the constitution was framed and adopted, an election which was procured by fraud, intimidation, or corruption was no election. Id. at 555.

> A governor...cannot be elected at a void election any more than can a constable or coroner. Id. at 556.

Even the certificate of election of the vested authority was not found to be incontrovertible. "[T]he certificate is manifestly of no effect because there was no election. The certificate of election is not a title; it is a mere muniment of title...." Id. at 553. See State ex rel Drew v. Board of State Canvassers 16 Fla. 17 (1877).

The U. S. Constitution and the Wisconsin Constitution identically provide that "each house shall be the judge of the elections, returns, and qualifications of its own members," giving a strong indication of how and with what words these two Constitutions would vest the jurisdiction for judging the election of other officials. But no provision for judging the elections of other officials is provided in either Constitution (other than the functional vote clauses - e.g., the vice president in the presence of Congress shall "open all the certificates and the votes shall then be counted" Article 12, U.S. Constitution). The parallel is thus complete and it is therefore quite to the point when the La Follette Court states, after taking note of the above facts concerning its Constitution:

> [I]n the absence of a provision of the constitution vesting the jurisdiction in some other branch of the government it is within the jurisdiction and power of the courts to determine in the manner provided by law whether or not an election of all other public officers [other than legislative officers] has been held in accordance with the manner prescribed by law.... By so doing it does not enter the political field but confines itself to the exercise of judicial power. LaFollette v. Kohler, supra at 556.

Another even more emphatic example of an intrusion into a governorship being terminated is Attorney General ex rel Bashford v. Barstow, 4 Wis. 567 (1856). The statement "In my judgement this case is fraught with as much political and judical importance as any case that has arisen since the organization of our government," id. at 655, could well be describing the instant appeal.

The Bashford Court, reacting with incredulity to the claim that a man's title to the governorship could not be tested and, if he was a usurper, his term of intrusion could not be terminated, asked "[I]s there no redress? Is there no power competent to inquire into his right to hold office, and protect the Constitution from invasion?" Id. at 747-748. The Court continued:

> [W]here is the remedy? What power of the state can give relief? Are we remediless? Instances of this kind might be multiplied to any extent. I put them, because they are many of them stated during the progress of the argument, and they are cases, too easily understood. And the question returns upon us, where is the protection of the people against them? Counsel seem to feel the necessity that there should be some remedy for them, and they significantly hinted where that remedy was to be found. It was to be found in a revolution. Ah! but that is not a constitutional remedy. It is one above the constitution. But we are now considering what means the constitution has provided for its own preservation. For if it has not those means, ample, adequate and equal to the political emergency of such, and other like cases, it is hardly worth spending any breath upon. Id. at 748.

With a pointedness that perfectly fits the instant appeal, the Bashford Court said:

> What power of this government is to settle this controversy? I think that the conclusion is irresistible, that it is a judicial power. If the contest cannot be settled at all. And if redress cannot come from that source, it can only come in a violent manner by revolution. And is this government thus powerless, impotent to correct an evil of this kind, impotent to shield its own high offices from usurpation? I cannot believe it. Id. at 749-750.

Not in spite of, but rather because of the importance of the Presidency the Courts should "hesitate to set a precedent in contravention of basic Constitutional principles that might permit or encourage some future high executive officer to become a despot." In re Nixon, 360 F. Supp. 1, 5 n.6 (D.D.C. 1973). The Bashford Court echoes this: "And here I may be permitted to repeat, that the higher and more sacred an office created by the Constitution may be, the stronger the reason and the greater the necessity for guarding it against unwarrantable intrusion." Bashford v. Barstow, supra at 780. And the Bashford Court seems to reach the pitch of anger when it declaims the immunity of a person who has made a successful intrusion into the governorship.

> [T]o claim exemption...on the ground that he has already succeeded in his intrusion or usurpation, then indeed, was the work of the framers of the constitution a mere sound, an empty expression - and the constitution itself is utterly helpless - open to invasion, unguarded, undefended, stripped of its armor, a declaration of prin-

ciples without sanction, an idle covenant without obligation - a pompous pretension to supreme and fundamental law, but in fact a supple instrument in the hands of ambition, to be moulded at convenience or defied at will, as the occasion may suggest. Id. at 761.

2) IMPEACHMENT IS NOT THE ONLY METHOD BY WHICH CIVIL OFFICERS OF THE U.S. ARE REMOVED FROM OFFICE

The First Congress (1789) rejected the notion that impeachment was the exclusive method by which civil officials could be removed and, standing on logic, agreed that executive officers appointed by the President may be removed by the President. The following two excerpts from the Debate in the First Congress (1 Ann. Cong. 496) express the consensus that impeachment was not an exclusive method of removal:

> Mr. Madison did not conceive it was a proper construction of the Constitution to say that there was no other mode of removing from office than that by impeachment.... He believed they would not assert that any part of the Constitution declared that the only way to remove should be by impeachment....
>
> [Mr. Vining] viewed the power of removal, by impeachment, as a supplementary security to the people against the continuance of improper persons in office; but it did not consist with the nature of things, that this should be the only mode of removal; it was attended with circumstances that would render it insufficient to secure the

public safety, which was a primary object of every government.

Just because an executive officer is open to impeachment does not mean he is immune from dismissal: likewise, just because a President is open to impeachment does not mean the judiciary cannot try his title and right to office and if found lacking, terminate his term of intrusion into the Presidency. The impeachment clause was not meant to pre-empt logic and leave the Constitution defenseless and unfunctional.

3) JUDICIAL REVIEW OF TITLE TO OFFICE OCCURRED IN "POWELL v. McCORMACK" 395 U.S. 486 (1969)

The House of Representatives denied Congressman-elect Powell title to his seat relying upon the power given to them in Article II, Section 5 (1) of the Constitution: "Each House shall be the judge of the...qualifications of its own members.: In Powell v. McCormack, supra filed by Powell to gain title to his seat, the Supreme Court held that they had jurisdiction for there was no "textually demonstrable constitutional commitment of the issue to a co-ordinate political department," Baker v. Carr supra, because "it is the province and duty of the judicial department to determine...whether [actions are]...in conformity to the Constitution; and if not to treat their acts as null and void." Powell v. McCormack, supra 506.

If a suit claiming that title to a seat in Congress was withheld by means not "in conformity to the Constitution" is justiciable, then surely a suit claiming title to the Presidency was acquired by means not "in conformity with the Constitution" is justiciable.

4) THE FUNCTION OF JUDGING THE CONSTITUTIONAL AND LEGAL VALIDITY OF A PRESIDENTIAL ELECTION AND THE COINCIDENT TITLE TO THE PRESIDENCY IS NOT TEXTUALLY COMMITTED TO CONGRESS BY THE 12th AMENDMENT.

The pertinent part of the 12th Amendment reads:

> The President of the Senate shall, in the presence of the Senate and House of Represenatives, open all the certificates and the votes shall be counted: - The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed.... (emphasis added)

The straight forward language of the count clause had but one purpose - to constitutionally commit to the President of the Senate and to the Congress the duty of counting the votes. The existence of the parallel clause "each house shall be the judge of the election, returns, and qualifications of its own members", a strong and clear commitment of a judicial function, indicates what the count clause would have been like if the constitutional convention had given it judicial powers.

Under the power of the necessary and proper clause, Congress passed electoral vote counting statutes in 1887 and in 1948 (title 3 U.S.C. Section 15), which gave them quasi judicial power, but the debates on the bills clearly indicate that they do not wish to enlarge their jurisdiction.

5. THE 20th AMENDMENT ANTICIPATES THE SELECTION OF PRESIDENTS AFTER THE COMMENCEMENT OF CONSTITUTIONAL TERM OF OFFICE AND PROVIDES THAT HE WHO ACTS AS PRESIDENT SHALL BE REMOVED UPON SAID SELECTION.

A voided election means that there has been no election and that nobody has qualified for the Presidency or Vice Presidency...thereby immediately activating the 20th Amendment (Section 3) which provides for such contingencies:

> If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

This amendment clearly gives to Congress the function of determining who shall "act" as President when an election is voided and a President has yet to be elected. Judge Holden was therefore clearly on the wrong path when he said "the manner of succession and the timing thereof is explicitly set forth in Acticle II and in the 25th Amendment."

Note: The Succession Act of 1948 (Title 3 U.S.C. Section 19) establishes no conflict with new elections, for it put no negation on an acting President under the 20th Amendment being replaced by a newly elected President.

The Succession Act of 1792 and to a lessor extent the Succession Act of 1886 envisioned special elections when the offices of both the President and Vice President became vacant. The thought of elections in midterm were and are not UNTHINKABLE.

6. A PRESIDENT IS NOT IMPEACHABLE WHEN HIS ELECTION IS FRAUDULENT IF IT CANNOT BE PROVED HE WAS INVOLVED IN THE CORRUPTION - i.e. GUILTY OF "HIGH CRIMES AND MISDEMEANORS."

As was made eminently clear by the 1974 impeachment hearings of the House Judiciary Committee, a President must commit some misconduct to be impeached and even the most liberal interpretations of "high crimes and misdemeanors" were very restrictive in what they considered impeachable misconduct. The Constitional Convention rejected such terms as "mal-practice" and "neglect of duty" (1 Farrand 88) and "misconduct" (2 Farrand 68-69) because they were not restrictive enough and instead inserted the more serious "high crimes and misdemeanors". An exhaustive study of: Constitutional Grounds For Presidential Impeachment (1974), Impeachment - Selected Materials (1973), Impeachment - Selected Material and Procedures (1974), "Brief on behalf of the President of the United States" in An Analysis Of The Scope Of An Article Of Impeachment (1974), all 4 are publications of the House Judiciary Committee: Impeachment - Miscellaneous Documents (1974), a publication of the Senate Committe on Rules and Administration; An Analysis Of The Constitutional Standard For Presidential Impeachment (1974), written by counsels for the President (Charles Wright, James St. Clair, et al); Impeachment: A Handbook (1974), by C. L. Black; and The Law Of Impeachment (1974), issued by the Association of the Bar of the City of New York, leaves no doubt that a President cannot be impeached just

because his election was fraudulent. Therefore, if impeachment is to be the only option, Presidential elections will be incontrovertible no matter how corrupt if either the President or Vice President is innocent or cannot be proved guilty of "high crime and misdeameanors"...and the right to "free elections" and the coincident right to a full-valued vote in Presidential elections will have been struck from the Constitution, for a right is not a right if there is no redress when it is withdrawn or stolen. And their unimpeachability would not be a sport or exceptional case for, in most elections voided by the courts, there are no findings or indications that a candidate was responsible for, or have anything to do with the conditions that made it necessary to null the election. But, rather, it was the power broker, the ideological zealots, the ignorant, and at times the invisible candidate who poisoned the election.

And what if both the President and Vice President were found to be guilty of corrupting their elections and were impeached and convicted of "high crimes and misdemeanors" thereby making the Speaker of the House the "acting" President - does that redress the election? Of course it doesn't. The Constitution through a sweeping penumbra of Acticles and Amendments (Article II, Section 1; and Amendments I, IV, V, IX, XIV, XV, XIX, XX, XXIV, and XXVI) surely demands that a corrupted and fraudulent election be voided and new elections called.

What must be remembered and understood is that there are two distinct questions here: Is there impeachable conduct and is there a fraudulent election? (In one you try the President's misconduct, in the other you try his title to the Presidency.) Each can exist separately or they can co-exist. When they do co-exist, each should be pursued irregardless of the presence of the other question, although a successful trial of an intruder's title to the Presidency may make impeachment moot.

This brief does not therefore contend that a President cannot be impeached for crimes committed to corrupt his election; what it does contend, however, is that his title to the Presidency can be tried irregardless of his personal involvement in the corruption of his election and his resultant vulnerability to impeachment. To be otherwise would mean an Alice-In-Wonderland kaleidoscope of nonsense and mischief.

## B. VENUE

"Venue is a concept of convenience" see Neirbe Co. v. Bethleham Shipbuilding Corp., 308 U.S. 165, 167 and "it should be treated in practical terms" see Sperry Prods., Inc. v. Ass. of Am. R. Rs., 132 F 2nd 408 (2 cir. 1942). Judge Holden dismissed appellants complaint because there was no named plaintiff who alleges he voted in Vermont in the 1972 Presidential Election. It is obvious that this fact can, with ease, be repaired making the suit acceptable in the Vermont District Court with no benefit to anybody except to cause delay. The statute on venue is to enforce practicality and convenience; if venue will inevitably lie in the Vermont District Court, it serves no purpose to deny venue now - except possibly to delay justice.

Judge Holden was in error when he held that "Plaintiff's claim [which] involves the alleged deprivation of his rights to "FREE ELECTIONS in the 1972 Presidential Election" did not arise in Vermont because there was no allegation in the complaint that plaintiff voted in Vermont in the 1972 Presidential Election. The thinking here is an anacronism, for Courts have long held that an election is not just the act of voting but rather the whole process from beginning to end. In La Follette v. Kohler, supra the election itself was voided because defendant spent too much money in the long gone primary. In the instant complaint the whole election process was alleged to have been tainted by various illegal means. If, as alleged in the complaint (P. 4), the primary process (i.e. the choice of candidates) was manipulated to a degree that pre-empted the possibility of "free elections" in the general election, then to contend that the physical vote in November determines whether or not one suffered a loss of "Free Elections" is on its face fatuous. If one's vote is devalued, the loss is suffered at the time of the devaluation, not when and where he votes.

Plaintiff while residing in Vermont suffered injury to himself because his ability to vote intelligently for the person who truly represented his beliefs was inexorably being destroyed by the "Informational Irregularities" (see p. 5 of Brief) of defendants. If the harm is done to Plaintiff in Vermont, it is immaterial in which state he voted (and therefore no alle ged place of voting was given). Surely a claim would have arisen in Vermont even though the Plaintiff was voting out of state, if he was sending an absentee ballot to another state from Vermont and that ballot was purposefully destroyed in Vermont by somebody; or if he was forcefully retained in Vermont to keep him from voting; or if he was given a non-existent pill in Vermont that would poison his ability to vote for the man of his choice.

As council for the defendant committees acknowledged on page 5 of their memorandum for dismissal, "the residents of an unincorporated association has for venue purposes, been expanded by the Second Circuit to include 'all the judical districts in which the unincorporated entity is doing business'...Rutland Railway Corporation v. Botherhood of Locomotive Engineers, 307 Fd 21 (2ed Cir. 1962)."

> Since the residence of a corporation for venue purposes has been expanded to included ~~to include~~ all the judicial districts in which the corporation is doing business, the residence of an unincorporated association for venue purposes should likewise be expanded to include all the judicial districts in which the unincorporated entity is doing business. Id. at 31.

This ruling has not been overturned and it is clear that the defendant committees had business in Vermont by the simple allegation of complaint that they were the committees responsible for the Presidential

campaign of President Nixon which, by the nature of things, would do business in all 50 states.

## V. CONCLUSION

Justiciability: Appellant seeks reversal of Chief Judge Holden's order dismissing complaint on the grounds that the issues presented a non-justiciable Political Question.

Venue: Appellant seeks reversal of Judge Holden's order dismissing complaint for lack of proper venue in the district.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

| | |
|---|---|
| Charles Bradley Griffith, on behalf of himself and all others similarly situated<br><br>v.<br><br>Richard M. Nixon, individually and as President of the United States; Committee for the Reelection of the President; and the Finance Committee to Reelect the President | Civil Action<br><br>File No. 74-70 |

MEMORANDUM AND ORDER

The plaintiff in this action filed a fifty page pro se complaint against Richard M. Nixon, individually and as President of the United States, the Committee for the Re-election of the President and its Finance Committee. The complaint is asserted on behalf of "50,000,000 members, consisting of all U.S. citizens who were registered to vote in the 1972 Presidential election." Plaintiff seeks class action status, a declaratory judgment that the "1972 Presidential elections [are] null and void," mandatory relief ordering that "new elections be held November 5, 1974" and compensatory and punitive damages in the amount of $22,025,000.00.

It is alleged that "the defendants and their agents, in violation of 42 U.S.C. § 1985(3), did conspire to and did deprive him and others similarly situated- of his (their) right and privilege as a Citizen of the United States to 'Free Elections' ...."

The plaintiff lists ninety-five acts of suppression,

Filed September 27, 1974
Sharon T. Miller
Deputy Clerk

repression, espionage, extortion and fabrication that the defendants allegedly used to "unlawfully manipulate the political-electoral-nominational processes of the Democratic Party to prevent the nomination of a strong Democratic Presidential candidate in 1972." After written and oral argument the case is presently before the Court for disposition of the defendants' motions to dismiss.[1] These motions challenge the plaintiff's standing, justicability, in personam jurisdiction and venue.[2]

The plaintiff's pray that the Court declare that the 1972 Presidential Election was null and void, that it order new national primaries, provide for the election and inauguration of a new President and Vice President and declare the defendant Richard M. Nixon an ineligible candidate for such election. Where the Constitution assigns a particular function wholly and indivisably to another department, the federal judiciary will not intervene. Oetjen v. Central Leather Co., 246 U.S. 297 (1917). Such matters are said to raise non-justiciable political questions which remove the case from the jurisdiction of the federal courts. The doctrine was stated by the Supreme Court in Baker v. Carr, 369 U.S. 186, 217 (1962) as follows:

> It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held

> to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. (emphasis added)

In the instant case the removal and the manner of succession of a president are explicitly committed by the Constitution to the Congress and not the courts. The remedy for the types of acts complained of in this case is vested in Congress by virtue of Article II, Section 4, which states, "The President, Vice President, and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." The manner of succession and the timing thereof is explicitly set forth in Article II and in the 25th Amendment, as is the manner in which the Vice President is to be selected upon a vacancy in that position. Since there is a "textually demonstrable constitutional commitment of the issue" raised by this aspect of the request for relief, it seeks to present a non-justicable political controversy that is inappropriate for decision by this Court. See Hart and Wechsler, The Federal Courts and The Federal System (2d Ed. 1973) 233-41.

Since the complaint does request money damages for deprivation of his right to vote by the alleged violations of

42 U.S.C. § 1985(3) by the defendants, the Court must address the question of whether venue is properly laid in this district. The appropriate statute, 28 U.S.C. § 1391(b), provides, "A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose ...." It appears that none of the defendants reside in Vermont, thus venue is proper only if the plaintiff's claim arose in Vermont. The plaintiff's claim involves the alleged deprivation of his right to "free elections" in the 1972 presidential election. The deprivation of his right to vote in a free election can only be said to arise in Vermont if he was a registered voter and did in fact vote in Vermont in the 1972 presidential election. The plaintiff has only alleged that he was "a registered voter in the 1972 Presidential election- is a Citizen of the United States now residing in the County of Windham, State of Vermont." There is no allegation that he was registered to vote here or that he did in fact vote in Vermont in 1972. Therefore, the complaint cannot be construed to allege that the plaintiff's claim arose in the District of Vermont.

Even assuming, arguendo, that the matter is an appropriate one for a class action, venue would still be improper. In a class action the named parties must adhere to the applicable venue requirements. Wright and Miller, Federal Practice and Procedure § 1757.

The want of proper venue makes it unnecessary for the Court to deal with the remaining questions raised by the motion to dismiss.

It is ORDERED: That in so far as the complaint requests a declaration that the 1972 presidential election is null and void and requests a new presidential election, it is dismissed for lack of jurisdiction. The remainder of the complaint is dismissed for lack of proper venue in this district.

Dated at Rutland, in the District of Vermont, this 24th day of September, 1974.

James S. Holden
Chief Judge

Footnote

1/ The Court takes judicial notice of the fact that the defendant Richard M. Nixon resigned from the office of the president effective August 9, 1974. This, however, does not render the case moot because there is further relief requested by the plaintiff in that he asks this Court to order a new election and to award money damages. See DeFunis v. Odegaard, 42 U.S.L.W. 4578.

2/ Service of the summons and complaint, as to all defendants, was made on George W. F. Cook, United States Attorney at Rutland, Vermont, on March 21, 1974. On May 16, 1974 the United States of America by George W. F. Cook, United States Attorney for the District of Vermont, moved that the United States be permitted to appear as amicus curiae, and filed a memorandum of law seeking the dismissal of the action, asserting lack of jurisdiction in the Court to adjudicate the non-justiciable political question alleged in the complaint and the plaintiff's lack of standing to maintain the suit. There has been no appearance entered by the defendant Richard M. Nixon. The Committee for the Re-election of the President and its Finance Committee have moved to quash the summons and dismiss the complaint for the reasons stated. It appears that the manner and method of service are not in accord with the provisions of Rule 4, Fed.R.Civ.P.

| TITLE OF CASE | ATTORNEYS |
|---|---|
| CHARLES BRADLEY GRIFFITH, on behalf of himself and all others similarly situated<br><br>vs.<br><br>RICHARD M. NIXON, individually and as President of the United States; Committee for the Re-election of the President; and the Finance Committee to Re-elect the President<br><br>UNITED STATES OF AMERICA ---------- amicus curiae ---------- | For plaintiff:<br>Charles Bradley Griffith, pro se<br>Main Street, Box 263 RFD<br>Putney, Vermont<br><br>Esqs.<br>For defendant: Ryan, Smith & Carbine, /<br>Mead Building<br>Rutland, VT 05701<br>773-3344<br>(U. S. Attorney) |

| STATISTICAL RECORD | COSTS | | | DATE | NAME OR RECEIPT NO. | REC. | | DIS. | |
|---|---|---|---|---|---|---|---|---|---|
| 5 mailed APR 5 1974 | Clerk | | | 3/7 | #22429 | 15 | 00 | | |
| | | | | 3/15 | C D 1-39 | | | 1 | 00 |
| | | | | 10-29 | #23394 | 5 | 00 | | |
| 6 mailed OCT 4 1974 | Marshal | | | 10-31 | C 11-419 | | | 4 | 00 |
| s of Action: Civil Rights - T42, Sec. 1985(3); USC, Sec. 1343, 1331 & Sec. 1332 (a,1) | Docket fee | | | | | | | | |
| | Witness fees | | | | | | | | |
| on arose at: 2 | Depositions | | | | | | | | |

| | | |
|---|---|---|
| Mar. 7 | Filed Complaint. | |
| " " | Issued Summons. | |
| " 25 | Filed Summons returned served. | |
| May 17 | " Government's Motion for leave to appear as amicus curiae. | |
| " " | " Government's Memorandum of Points & Authorities. | |
| " " | In Chambers before Judge Holden, John J. Zawistoski, Esq. for deft. Committee to Relect the President moves for additional time to file answer, v. | |
| " " | ORDERED: Motion granted. Deft. Committee to Re-Elect the President may have additional ten days to file answer. Parties notified. | |
| " 25 | Filed Deft.'s Motion to quash Summons and Dismiss Complaint. | 5. |
| June 10 | Filed Deft.'s Memorandum under Local Rule 9. | 6. |
| " 20 | Filed Plaintiff's request dated June 15, 1974. | 7. |
| July 11 | " " Motion in Reply and Memorandum of Points and Authorities. | 8. |
| " 22 | Filed Government's Supplemental Memorandum of Points and Authoritie | 9 |
| " " | In Court before Judge Holden, Charles B. Griffith appearing pro se; Jerome O'Neill for Govt.; John Zawistowski, Esq. present for all other Defendants; Hearing on Govt.'s motion for leave to appear as Amicus Curiae. | |
| " " | Mr. O'Neill makes statements to Court in support of Govt.'s motion, not opposed by other counsel. | |
| " " | ORDERED: Motion of Government to appear as Amicus Curiae granted. | |
| " " | Mr. Zawistowski offers no further argument to Deft.'s motion to quash summons and dismiss Complaint. | |
| " " | Pltff. moves for additional time to reply to Government's memorandum filed today. | |
| " " | ORDERED: Motion granted. Pltff. allowed ten days to reply to Govt.'s memorandum. | |
| " " | Statements made to Court by Pltff. re facts of case; followed by Mr. Zawistowski and moves for time to reply to Pltff.'s memorandum. | |
| " " | ORDERED: Motion granted. Committees may have additional ten days to reply to Pltff.'s memorandum after it is filed. | |
| " " | Further statements made to Court by Pltff. and requests explanation for Committee's motion to quash. | |
| " " | Mr. Zawistowski made statements to Court re motion to quash. | |
| Sept. 27 | Filed Memorandum and Order--in so as far as the complaint requests a declaration that the 1972 presidential election is null and void and requests a new presidential election, it is dismissed for lack of jurisdiction. The remainder of the complaint is dismissed for lack of proper venue in this district. Mailed copy to Attorneys. | 10 |
| Oct. 29 | " Pltf's Notice of Appeal. Mailed copy to Charles Bradley Griffith, pro se, Ryan, Smith & Carbine, Esqs., U. S. Atty., Judge Holden, Court Reporter and Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. | |
| " " | Received check from Charles B. Griffith for $250.00 as security for costs on appeal. Attys. notified. | 11 |
| Dec. 5 | Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, New York, N. Y. Attys. notified. | |

CERTIFICATE OF SERVICE

I, Charles Bradley Griffith, plaintiff pro se, do swear & certify that I served the foregoing BRIEF.....
AND APPENDIX upon the United States of America (and Richard M. Nixon) by mailing a copy of same to Jerome F. O'Neill, Esquire, Assistant U.S. Attorney, Post Office Building., Rutland, Vermont 05701 and upon the Finance Committee to Re-elect the President and the Committee for the Re-election of the President by mailing a copy to their Attorneys, Ryan, Smith & Carbine, the Mead Building, Rutland, Vermont 05701.

Feb. 7, 1975

Charles Bradley Griffith
- pro se -
Box 291, Putney, Vermont